

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLN.(CONTEMPT PETITION) No 936 of 1995

in

SPECIAL CIVIL APPLICATION No 2592 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AJITRAM PRITAMRAM OZA

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI (Appointed) for Petitioner
M/S MG DOSHIT & CO for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/03/98

ORAL JUDGEMENT

1. For a cause which accrued in 1957, a petition was filed in 1981, [Special Civil Application No. 2592 of 1981] much after the date of retirement, which is 1970. However, considering the facts and circumstances of the case, the Court entertained the petition and issued certain directions in its judgment dated 16/17th September 1992 (Coram: S.D. Shah, J.), and the respondents were duty bound to carry out the said directions. It appears that on 17.11.1993, the certified copy of the judgment was served by the petitioner to the department. Thereafter, till 1995, the applicant continued to have correspondence with the Government. The petitioner did not think it proper to file a writ petition or a petition under the Contempt of Courts Act.

2. Thereafter, on 27th November 1995, the petitioner made a representation to the Honourable the Chief Justice of this Court. It appears that the same was ordered to be registered as a Contempt Petition. This application was accordingly numbered and placed before the Court and on 11.12.1995, notice was issued to the respondents.

3. On 21.12.1995, the second respondent fixed the salary upto 5.6.1993 and issued some directions for the first time to Rajkot Office. Later on, on 9.1.1996, a cheque for Rs.1316/- was received by the petitioner without intimating how the said amount was worked out. It appears that on 23.3.1996, at the request of the petitioner, the Advocate wrote to the deponent shri Dhobi pointing out that the order was not correct and there was non-compliance of the order passed by this Court. By a letter dated 18.5.1996, the said Mr. Dobhi wrote a letter to the Advocate informing him that what was done was correct and that the arrears as worked out were already paid. It appears that thereafter, on 22.10.1996, the petitioner filed an affidavit pointing out the anomalies in the order passed by the authorities, stating as under:-

"In other words, the respondents have confined the revision of my pay only for a period from 1.5.60 to 6.6.63 as if I was thereafter not in service. Accordingly, what has not been done pursuant to the judgment of the High Court can be summarized as under:-

- i). The notional fixation from 14.10.1957 to 1.5.1960;
- ii). Actual arrears to be worked out on the said notional pay fixation from 1.5.60 to

the date of my retirement i.e. on 24.10.1970 after the pay scale is revised from 1.10.1961 under Govt. Resolution dated 25.7.1972;

iii). The consequent revision of pension and gratuity from 25.10.1970 till date."

4. On 4.11.1996, a revised order was passed by the authorities on finding that the earlier order was incomplete and incorrect. On 29.1.1997, Shri Dhobi, Deputy Director filed an affidavit wherein he has admitted that despite efforts, they could not get the details of pay the petitioner drew from time to time from 14.10.1987 from the office of the Accountant General Rajkot. It appears that the petitioner pointed out by filing an affidavit that one B.C. Bhatt, who was his junior was given the scale of Rs.200-15-400 before 1.10.1961 and thereafter his pay was fixed in the grade of Rs.245-470 with effect from 2.9.1963. His submission was that as per the pay fixation of the said B.C. Bhatt, benefit should be given to him. It appears that the Court directed to collect the service book from the said B.C. Bhatt and submit the same to the department.

5. The original service book is yet not given to the department, but a xerox copy is given to the Department. Considering the same, the say of the department is that they have prepared a comparative chart and have placed it before the Court. We drew the attention of learned Advocate Mr. Hathi, who is appointed in this matter to assist the Court, that the Chart of the pay scale does not indicate that the petitioner received less amount than Mr. B.C. Bhatt and Mr. Hathi also could not point out as to at any point of time, Mr. Oza, the petitioner has received amount less than Mr. Bhatt as per the chart. From chart it appears that the Department has made their best efforts and have placed the material before the Court, and whatever was possible for them has been done and paid to the petitioner. As regards the service book of Mr. B.C. Bhatt, what is given is only a xerox copy and that also appears to be a xerox of a copy, and not of original because at several places where signature is to be made, it is written as 'sd/-' which indicates that it is not the original. At some places we find that rubber stamp of the concerned authority is affixed but above it also, there is no signature but 'sd/-' is written. Despite this, the Department has accepted it and whatever difference could be worked out, is paid to the petitioner.

6. Under the circumstances, though initially we were of the view that there is delay on the part of the concerned officers which calls for strict action, but considering the unconditional apology and the facts narrated above, we are of the view that the unconditional apology should be accepted and this application need not be proceeded further. If the petitioner deems it fit, he may initiate separate proceedings but certainly the jurisdiction of this Court under the Contempt of Courts Act cannot be exercised as a substitute to writ jurisdiction.

7. In the result, this application stands disposed of. Notice is discharged. No order as to costs.
csm./ -----